IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1761 OF 2006

Shri.Manohar Ganapati Jadhav & Ors. .. Petitioners.

Versus

Chand @ Appalal Chimaji Pandat
Since deceased through
legal heirs .. Respondents.

Shri.Amit Borkar for the petitioners.
None for the respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH FEBRUARY, 2007.

P.C.:

1. Heard Shri.Borkar appearing for the petitioners. All petitioners are the original respondents to an appeal which is numbered as Reg.Civil Appeal No.439 of 2004 and pending on the file of District Court, Kolhapur.

2. This appeal is directed against the order passed by Executing Court upholding the objections to the

executability and enforceability of a decree passed in favour of the respondents before me.

3. The petitioners-original respondents to the appeal during the pendency thereof, sought permission to carry out repairs to the immovable property which is subject matter of the decree and that application was rejected by the lower Appellate Court by the impugned order.

4. Shri.Borkar has pointed out that the impugned order suffers from serious infirmities in as much as there was a certificate of Structural Engineer already placed on record pointing out therein that the structure requires immediate and urgent repairs. He submits that once such was the material placed on record, the lower Appellate Court ought to have permitted repairs being carried out under its supervision and for that purpose, none could object appointment of any independent Engineer /Commissioner.

5. In my view, it is not necessary to summon the respondents and go into all these aspects simply because the order under challenge is passed in the month of January, 2006. Hence, calling for fresh materials, would not be just fair and proper. In such circumstances, the

petition is summarily dismissed. However, the petitioners are at liberty to apply for repairs to the immovable property/structure afresh in case the appeal is still pending and there is no likelihood of its being disposed of by 30th April, 2007.

6. Petition dismissed with the aforesaid liberty. All contentions of both sides with regard to the repairs to the structure/property are expressly kept open.

7. No order as to costs.

(S.C.Dharmadhikari, J.)